



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

Mr. Richard Gorodesky  
Senior Vice President  
Colliers International  
Ten Penn Center  
1801 Market Street, Suite 550  
Philadelphia, PA 19103

Re: One Red Lion Road & 10098 Sandmeyer Lane, Philadelphia, PA 19115

Dear Mr. Gorodesky:

I am writing in response to your written inquiry on March 22, 2017, to the U.S. Environmental Protection Agency (EPA or the "Agency") concerning the property referenced above (the "Property"). In your inquiry, you described the prospective buyer's intentions to acquire the Property and build a distribution center (the "Development"), and you requested a Superfund comfort letter from EPA. The purpose of this letter is to provide you and the buyer with information EPA has about the Property and any potentially applicable federal statutory and regulatory provisions and Agency policies, as of the date of this letter. I hope the information in this letter enables you and the buyer to make informed decisions as you move forward with the acquisition and Development of the Property.

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as "Superfund"), EPA's mission is to protect human health and the environment from the risks posed by contaminated or potentially contaminated lands. In doing so, it is the Agency's priority to return lands to appropriate productive reuse. EPA is issuing this letter consistent with the Agency's current guidance.

### **Property Status**

Information on sites that are potentially hazardous and may warrant action under Superfund, including site-specific documents and fact sheets, is recorded by EPA in the Superfund Enterprise Management System (SEMS), which may be accessed at <http://cumulis.epa.gov/supercpad/cursites/srchsites.cfm>. SEMS is a publicly accessible database containing non-confidential information about sites where there has been some EPA involvement under Superfund.

The Property is situated within the Budd Company Dump Site (the "Site"). This Site is located in SEMS, but has been archived. For the reasons stated below, EPA has concluded response actions at the Site and does not presently contemplate taking additional Superfund action there.



## History and Status of the Site

The following is a summary of information that EPA currently has regarding the Site.

Parts of the Site were once used as a disposal area by former owner and operator, Budd Company. Materials disposed of at the Site may have included hydraulic fluid, xylene, toluene, mineral spirits, kerosene, and polychlorinated biphenyls (PCBs). Analytical sampling results from 1980 showed high levels of PCBs at the Site. Budd Company completed a cleanup at the Site in December 1980. Nevertheless, additional sampling conducted by EPA in August 1981 still showed high levels of PCBs at the Site. Budd Company subsequently performed its own sampling, the results of which only showed levels of PCBs of up to 9 parts per million (ppm) in on-Site soils.

In September 1988, after further evaluating the Site, EPA determined that, although some residual PCB contamination remained at the Site, no further response action was needed at that time. EPA's decision was based, in part, on the lack of a target population at that time within three miles of the Site. At that time, EPA referred the Site to the Pennsylvania Department of Environmental Resources, the predecessor to PADEP, for consideration under the Commonwealth's cleanup program. A copy of EPA's September 1988 determination is enclosed with this letter.

From approximately 1998 to 2000, Transit America, Inc., a former owner of the Property, conducted remedial measures there as part of Pennsylvania's Voluntary Cleanup Program (VCP) under the Pennsylvania Land Recycling and Environmental Remediation Standards Act ("Act 2"), 35 P.S. Sections 6026.101 *et seq.* In 2000, PADEP approved Transit America's Final Reports for groundwater and soil, respectively, noting that the Property had attained Act 2's Site-Specific Standards for several hazardous substances, including PCBs.

In April 2004, PADEP and EPA entered into the "One Cleanup Program" Memorandum of Agreement (MOA). One of the purposes of this MOA is to establish how EPA and PADEP generally intend to exercise their authorities under CERCLA and Act 2 at properties being addressed under the VCP. Of particular relevance to conditions at the Property, the MOA established that cleanups of properties contaminated with PCBs subject to 40 C.F.R. Part 761 ("TSCA PCB regulations") would be performed in accordance with the substantive and procedural requirements of the TSCA PCB regulations, including, but not limited to, 40 C.F.R. §§ 761.50 and 761.61, which establish both numerical and risk-based standards for PCB cleanups. Because the MOA post-dates by several years Transit America's remediation of the Property under the Act 2 program, this remediation may not have been performed in accordance with the substantive and procedural requirements of the TSCA PCB regulations.

In 2004 and 2005, EPA Region III's TSCA PCB program initiated, but did not complete, an investigation at the Site. This investigation appears to have been triggered by a concern that the remedial measures conducted by Transit America at the Site may not have been conducted in accordance with the TSCA PCB regulations. EPA has no current plans to resume this investigation and reserves its rights under TSCA.

In November 4, 2013, EPA received an inquiry about the Site from Member of Congress Allyson Schwartz (PA-13th District) concerning alleged non-compliance with use restrictions required under the VCP. For instance, a constituent had informed Ms. Schwartz that, while working at the Site, he was instructed by his employer to excavate in areas of the Property where this type of activity was prohibited

because of the presence of PCBs. EPA referred Representative Schwartz's inquiry to PADEP as the agency responsible for overseeing the Property's remediation and asked the Department to investigate the matter.

Following EPA's 1988 decision, the Agency archived the Site from the SEMS site inventory because, following site evaluation activities, the Agency determined that conditions at the Site did not warrant further federal Superfund involvement. The "archive" designation indicates the Site is of no further interest to EPA under the federal Superfund program based on available information. At this time, EPA is not taking additional Superfund investigatory, cleanup, and enforcement actions at this archived Site, unless new information warranting further Superfund response action or conditions not previously known to EPA regarding the Site are discovered.

### **Reuse of the Property**

Based on the information you provided, EPA understands that the prospective buyer intends to develop a distribution center at the Property. EPA understands the Development would involve the building of a distribution center, the retention of the Property's zoning for industrial use, and the potential creation of 1,200 jobs. It is important to note that any development of the Property should be compatible with both Pennsylvania and federal regulations and laws, including, but not limited to regulations promulgated under the Toxic Substances Control Act (TSCA) governing PCBs and found at 40 C.F.R. Part 761. Based on the facts presently known to EPA, the Agency has not identified any obvious incompatibility between the proposed use of the Property and existing Site conditions. As your plans develop further, you should continue to discuss the Development with EPA, as well as consult with your own legal counsel and environmental professional.

### **CERCLA's Bona Fide Prospective Purchaser Liability Protection**

CERCLA was amended in 2002 to allow certain parties who purchase contaminated or potentially contaminated properties to buy such properties and to avoid potential CERCLA liability if they qualify as a "bona fide prospective purchaser" (BFPP). The BFPP provision provides that a person meeting the criteria of CERCLA §§ 101(40) and 107(r)(1), and who purchases after January 11, 2002, will not be liable as an owner or operator under CERCLA. The BFPP provision is designed to be self-implementing, meaning the purchaser is responsible for achieving and maintaining BFPP status.

To assist the purchaser and its legal counsel, EPA has issued guidance regarding some of the criteria landowners must meet in order to qualify for the BFPP protections under CERCLA. *See Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Contiguous Property Owner, or Innocent Landowner Limitations on CERCLA Liability (Common Elements)* (Mar. 6, 2003) ("Common Elements Guidance"), which may be accessed online at <http://www.epa.gov/enforcement/interim-guidance-common-elements-landowner-criteria-qualify-bfpp-cpo-or-ilo-superfund>.

CERCLA requires a party to perform "all appropriate inquiries" prior to acquiring real property. There are other BFPP requirements such as providing certain notices, taking "reasonable steps," providing cooperation, assistance, and access, and complying with institutional controls. Please note that there are additional criteria addressed in CERCLA §§ 101(40) and 107(r)(1) that a landowner must meet in order to qualify as a BFPP under CERCLA. The purchaser and its legal counsel will need to assess whether

the purchaser satisfies each of the statutory requirements necessary to achieve BFPP status and continue to meet the applicable criteria.

Among other criteria outlined in the Common Elements Guidance, a BFPP must take “reasonable steps” to stop continuing releases, prevent threatened future releases, and prevent or limit human, environmental, or natural resources exposure to earlier releases as required by CERCLA § 101(40)(D). EPA believes appropriate reasonable steps at the Site would include, as required by the MOA, compliance with the substantive and procedural requirements of TSCA PCB regulations. Reasonable steps would also include compliance with all use restrictions described on the deed for the Property.

Any reasonable steps suggested by EPA are based on the nature and extent of contamination known to the Agency at this time and are provided solely for informational purposes. If additional information regarding the nature and extent of hazardous-substance contamination at the Property becomes available, additional actions may be necessary to satisfy the “reasonable steps” criterion. You should ensure that you are aware of the condition of the Property so that you are able to take reasonable steps with respect to any hazardous-substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

### **State Actions**

EPA is only providing you with information regarding Agency’s Superfund actions at the Site and federal law and guidance. You should contact PADEP for more information about potential state actions and liability issues.

### **Conclusion**

EPA generally issues Superfund comfort letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties. This comfort letter is intended to help you make informed decisions by providing you with the Superfund information that EPA has about the Property and by identifying the CERCLA statutory protections, guidance, resources, and tools that may be potentially available for the Property.

This letter is not intended to limit or affect EPA’s authority under CERCLA, TSCA, or any other law or to provide a release from CERCLA liability. EPA encourages you to consult with legal counsel, an environmental professional, PADEP, Montgomery County, and the City of Philadelphia before taking any action to acquire, clean up, or reuse potentially contaminated property. It is your responsibility to ensure that the proposed use of the Property complies with any federal, state, and local laws or requirements that may apply.

EPA supports appropriate reuse of contaminated properties and hopes the information in this letter is useful to you. To facilitate the buyer’s and your further evaluation of the Property, my staff has requested any archived records concerning the Property to be returned to EPA Region III’s office for your review. If you have any additional questions or wish to review or discuss this information further, please feel free to contact Christopher Thomas at (215) 814-5555, or have your attorney contact Robert Hasson at (215) 814-2672.

Sincerely,

Karen Melvin  
Director  
Hazardous Site Cleanup Division

cc: Christopher Thomas (3HS52)  
Robert Hasson (3RC41)

DRAFT